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collateral estoppel, or the law of the case.**

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**IN THE  
COURT OF APPEALS OF INDIANA**

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WILLIAM TABOADA,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 49A05-0612-CR-747

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Sheila Carlisle, Judge  
The Honorable Richard Sallee, Senior Judge  
Cause No. 49G03-0604-FB-65562

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**October 25, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

William Taboada appeals his convictions for attempted robbery, as a class B felony, and criminal confinement, as a class B felony.

We affirm.

## ISSUE

Whether the State presented sufficient evidence to support the convictions.

## FACTS

On April 2, 2006, Kenneth Rogers was stopped at a red light when Shawn Alexander, with whom Rogers was acquainted, walked up to Rogers's car and kicked it. Alexander then followed Rogers into a gas station, where they argued.

Cameron Carlisle, a friend of Rogers, and Joshua Crum also were at the gas station and witnessed the argument between Rogers and Alexander. At one point during the argument, Alexander asked Carlisle what he was "lookin' at" and told Carlisle that he would have him "robbed next[.]" (Tr. 162). Alexander then left the gas station.

After leaving the gas station, Alexander drove home, where he telephoned Taboada. After speaking with Alexander, Taboada went to Alexander's house, where Taboada "retrieved his gun . . . ." <sup>1</sup> (Tr. 197). Taboada and Alexander then drove to Rogers' apartment complex in Taboada's car.

Rogers drove home after the incident at the gas station. Carlisle later drove to Rogers' apartment with Crum and Todd Gipson, where they watched television with

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<sup>1</sup> Alexander testified during trial that although the gun was registered to Taboada, Taboada kept it at Alexander's house.

Rogers. At some point, Carlisle, Crum and Gipson left Rogers' apartment. Carlisle agreed to let Gipson drive his car; therefore, Carlisle sat in the front passenger's seat, Gipson sat in the driver's seat, and Crum sat in the back seat, behind Gipson.

Before Gipson could back Carlisle's car out of the parking space, Alexander and Taboada drove into the apartment complex's parking lot and parked behind Carlisle's car. Alexander immediately exited Taboada's car and "ran to the driver's side" of Carlisle's car. (Tr. 163). Alexander then reached into the back seat and punched Crum.

Taboada also exited his car and went to the passenger's side of Carlisle's car. Taboada pressed a gun to Carlisle's right leg, told him to empty his pockets and then "reached in [Carlisle's] right pocket[.]" (Tr. 164-65). Finding Carlisle's pocket to be empty, Taboada hit Carlisle on the head with the gun, causing Carlisle to strike his head on the dashboard and "black out." (Tr. 170). As Taboada hit Carlisle with the gun, the gun's magazine fell out of the grip. Carlisle felt someone grab his shoulders, pull him out of the vehicle and throw him on the ground.

After realizing that there was an altercation in the parking lot, Rogers left his apartment. As Rogers approached the scene, Taboada put the clip back in the gun and pointed the gun at Rogers. Rogers retreated when he realized his daughter was next to him. Taboada and Alexander left after Rogers' girlfriend hit Alexander with a board.

On or about April 5, 2006, Grant Schwomeyer, a detective with the Marion County Sheriff's Department, took statements from Rogers, Carlisle, Crum and Gipson regarding the events of April 2, 2006. Rogers and Carlisle identified both Alexander and Taboada from a photographic array as the men who assaulted Carlisle and Crum.

On or about April 11, 2006, officers with the Marion County SWAT team executed a search warrant for the residences of Alexander and Taboada. The search of Alexander's residence uncovered "several large stacks of money; a semi automatic handgun and an extra magazine for that handgun." (Tr. 119).

When officers searched Taboada's residence, they observed a white Buick parked in front of the residence. The Buick matched the description of the car used by Taboada and Alexander to block Carlisle's car. The Buick was registered to Taboada. Upon questioning, Taboada admitted that he was involved in an altercation on April 2, 2006, but he denied using a gun.

On April 11, 2006, the State charged Taboada with Count 1, attempted robbery, as a class B felony; and Count 2, criminal confinement, as a class B felony. The trial court held a joint jury trial on November 20, 2006. During the trial, Rogers testified that he witnessed Taboada hit Carlisle's head with a gun and pull Carlisle out of his car. Gipson testified that he saw Carlisle get "snatched" out of the car and heard someone say, "give me your money" to Carlisle. (Tr. 109). Also during the trial, Taboada denied putting his hand in Carlisle's pocket and pulling Carlisle out of the car.

The jury found Taboada guilty as charged. Following a sentencing hearing on November 29, 2007, the trial court sentenced Taboada to ten years on each count, with the sentences to run concurrently, and suspended two years.

### DECISION

Taboada asserts that the evidence is insufficient to support his convictions for attempted robbery and criminal confinement. We disagree.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

*Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

1. Attempted Robbery

Taboada contends there was insufficient evidence that he attempted to rob Carlisle. Indiana Code section 35-42-5-1 provides as follows:

A person who knowingly or intentionally takes property from another person or from the presence of another person:

- (1) by using or threatening the use of force on any person; or
  - (2) by putting any person in fear;
- commits robbery, a Class C felony. However, the offense is a Class B felony if it is committed while armed with a deadly weapon or results in bodily injury to any person other than a defendant . . . .

Furthermore, “[a] person attempts to commit a crime when, acting with the culpability required for commission of the crime, he engages in conduct that constitutes a substantial step toward commission of the crime.” Ind. Code § 35-41-5-1.

Taboada posits that in telling Carlisle to empty his pockets, “it easily could have been a precautionary measure to determine whether or not Carlisle was armed.” Taboada’s Br. 6. While this may be true, it is not “necessary that the evidence overcome every reasonable hypothesis of innocence.” *Drane*, 867 N.E.2d at 147.

Here, the record reveals that Taboada held a gun to Carlisle's leg and told Carlisle to "empty [his] pockets." (Tr. 164). Taboada then "reached in [Carlisle's] right pocket . . . ." (Tr. 164-65). Furthermore, Gipson heard someone demand Carlisle's money. Although Taboada denied putting his hands in Carlisle's pockets, it was up to the trier of fact to resolve any conflicting testimony. *Brown v. State*, 830 N.E.2d 956, 968 (Ind. Ct. App. 2005). In this case, the jury chose to reject Taboada's testimony. Taboada merely invites us to assess the credibility of the witnesses and reweigh the evidence, which we will not do. *Drane*, 867 N.E.2d at 146. Accordingly, we find the evidence sufficient to convict Taboada of attempting to rob Carlisle.

## 2. Criminal Confinement

Taboada further asserts that the evidence was insufficient to support his conviction for criminal confinement. Taboada argues that the evidence is contrary to the finding that he "forcibly removed Carlisle from the car." Taboada's Br. 6.

Pursuant to Indiana Code section 35-42-3-3(a), a person who knowingly or intentionally "removes another person, by fraud, enticement, force, or threat of force, from one (1) place to another," commits criminal confinement. The offense is a class B felony if it is committed while armed with a deadly weapon. I.C. § 35-42-3-3(b).

Gipson testified that he "seen [sic] [Carlisle] drug [sic] out of the car . . . ." (Tr. 95). Rogers testified that he witnessed Taboada pull Carlisle out of the car. Carlisle testified that he remembered "someone grabbing [his] shoulder, and [he] was pulled out of the car." (Tr. 170-71). Although Carlisle did not see who pulled him out of the car, he testified that Taboada was the only other person on his side of the car. Thus, the jury

could reasonably find that that Carlisle was forcibly removed from the car and infer that it was Taboada who pulled Carlisle out of the car.

Moreover, Taboada testified that he “grabbed [Carlisle] by his legs and tried to pull him” but “didn’t pull him out the car though—not yet.” (Tr. 238) (emphasis added). Rogers testified that he saw Taboada “pullin’ [Carlisle] out” of Carlisle’s car and that Carlisle “was gettin’ pulled out of a car.” (Tr. 49, 73). Given the testimony, we find the evidence sufficient to support Taboada’s conviction for criminal confinement.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.